APPEAL NO. 93300

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp. 1993). On February 26, 1993, a contested case hearing was held in (city) Texas, with (hearing officer) presiding. She reopened the record on March 11, 1993 and closed it again on March 22, 1993, after which she determined that appellant (claimant) reached maximum medical improvement (MMI) on November 11, 1992, with 0% impairment. Claimant asserts the determination was in error when it concluded that MMI was reached on November 11, 1992 with 0% impairment, that the great weight of other medical evidence was not contrary to that of the designated doctor, and that the designated doctor did not have to be a specialist in the area of neurology. Respondent (carrier) did not file a reply,

DECISION

Finding that the decision and order are not against the great weight and preponderance of the evidence, we affirm.

Claimant, on January 25, 1992, drove a truck for (employer). On that day, one of the claimant's doctor's relates that he was struck by the cap of a propane hose that blew off under pressure, throwing claimant against the trailer; another doctor states that he was hit by a coworker in the chest, when the cap blew off, throwing claimant against the trailer. Claimant testified that it knocked him unconscious. He continued to work, driving the rig to Louisiana, from which he was driven home. His wife took him to an emergency room that night. During the drive to Jennings he vomited twice. The next day he saw a company doctor who referred him to (Dr. H), an orthopedic specialist who continues to treat him. Dr. H later referred claimant to (Dr. M) for his neurological symptoms (headache, memory) and also referred him to a clinical psychologist.

Claimant described his symptoms as neck and back pain, numbness, headache, dizziness and some loss of memory. Claimant indicated that he had less problem with headaches now since he was on a different medication. With no recommendations from any doctor that claimant should have surgery, claimant's medical treatment is reflected by the following medical records admitted in evidence.

Dr. H noted that claimant last worked on the day of the injury, that he is 5'9" and weighs 245 pounds, that he had multiple contusions and strains with headaches. He placed him on medication, physical therapy, interpreted x-rays as showing no fractures, dislocations, or abnormalities, and ordered more tests. Having seen the claimant weekly, Dr. H referred him to Dr. M on April 2nd and at the same time noted that an MRI showed no herniation but mild bulging at L4-5 and L5-S1. In July Dr. H noted that claimant described his pain as worse and commented that Dr. M was treating the headaches. Dr. H indicated that other tests showed degenerative type changes in the neck and mid-back plus spondylosis. On December 29, 1992, he recommended that claimant be taught "coping

skills."

Dr. M first saw claimant on April 27, 1992. He took his history and reviewed CT scans of the brain, thorax, and spine (lumbar and cervical). The first two were normal with the lumbar showing mild disc bulges and the cervical showing mild spondylitic disease. Myelograms showed the disc bulges and spondylitic disease also. An MRI showed disc desiccation without significant herniation. Dr. M recorded that claimant's story was "quite believable" for headaches and fibromyalgia. He indicated that he wished to make sure claimant has no significant structural abnormalities. On August 24th, Dr. M noted that SPECTamine and EEG show right organic brain problems that are "in agreement with trauma," describing his condition further as "chronic post concussive headaches." Then, on September 30, 1992, Dr. M states that he had an extended visit with claimant in which they "reviewed everything," including (Dr. F) opinions, but not (Dr. S) because they were not available at that time (Dr. S was requested by the carrier and his opinion was available prior to Dr. M's dictation of this note). Dr. M explains that claimant's complaints are connected to the accident in that they followed the accident. "I told him that we had gone about as far as we could go for treatment." Dr. M then notes that he discussed claimant's weight and blood pressure. "In the presence of his wife I told him that he needs to take responsibility for his own actions in this area." In an addendum to this note, Dr. M wrote that he planned to see claimant in three months, adding that if he had not addressed his blood pressure and begun an exercise program to lose weight "then I think that I will discharge him from my follow-up." On November 24, 1992, Dr. M changed the headache medication he was prescribing for claimant. On December 29th, Dr. M wrote that a chronic pain and cognitive treatment facility may be helpful and opined that with claimant's post traumatic syndrome and headache, he has not attained MMI.

On January 13, 1993, (Dr. C) (clinical psychologist) saw claimant in regard to a coping skills program and said that claimant has major depression which is typical of patients considered for this program; he believes claimant is an excellent candidate for the program.

The carrier introduced a report of Dr. F, a clinical psychologist referred to by Dr. M, who indicated that claimant had been psychologically tested on May 20, 1992. Dr. F referred to many tests administered and commented that claimant had no memory deficit significantly greater than his overall intellectual level. He added:

> In summary, (claimant) does not give evidence of organicity related to his recent trauma. There does appear to be some significant functional overlay on the physical difficulties that he has been experiencing. There appear to be strong suggestions of depressive symptomatology, as well as a possibility of secondary gain.

Dr. S saw the claimant on behalf of the carrier on August 19, 1992 and observed that

claimant could be released from care as far as his orthopedic problems were concerned.

The designated doctor, (Dr. T), saw claimant on November 11, 1992. Dr. T is an orthopedic specialist, as are Dr. S and Dr. H. He describes various tests that he conducted (the appeal does not take issue with the manner of Dr. T's evaluation but objects that a neurologist was not designated and asserts that Dr. H's and Dr. M's evidence constitutes the great weight of medical evidence which is against Dr. T's opinion), states that his impression of the diagnostic studies previously performed agrees with that of previous interpretations, and concludes that claimant has reached MMI "for his neck and back complaints." He added, "I do not feel that further diagnostic studies or active medical or surgical treatment are indicated as they would be unlikely to result in significant improvement in the patient's condition. I do feel a weight reduction program
would be indicated for his over-all health. He will need further followup with a neurologist for his chronic headache complaints." He then assigned 0% impairment.

In Texas Workers' Compensation Commission Appeal No. 93062, dated March 1, 1993, the appeals panel noted that a designated doctor who was not a specialist was not unqualified to evaluate a claimant when two orthopedic surgeons were in sharp disagreement concerning his status. That opinion noted that it would be appropriate in certain instances to designate a physician of a particular specialty, but stressed the role of the designated doctor as providing an objective, unbiased evaluation that could take into account other doctor's opinions, including opinions of doctor's outside her own area of practice or expertise. The concept of the designated doctor is not unlike that of the treating doctor who solicits consults from physicians or other health care providers in areas relevant to the disease/injury, weighs them, and then evaluates the patient. A neurosurgeon may have been able, as a designated doctor, to evaluate all claimant's symptoms, but that does not mean that Dr. T could not.

While the report of Dr. T does not clearly indicate that he accords MMI to claimant's complaints of headaches, he does address the headaches as "chronic" and characterizes the symptoms as "complaints." As a result, the hearing officer could consider the designated doctor's report as having considered all injuries from the accident of January 25, 1992, and thereafter concluded that the claimant had reached MMI. In Texas Workers' Compensation Commission Appeal No. 92394, decided September 17, 1992, the Appeals Panel observed that MMI does not mean that a claimant will always be free of pain. Similarly, continued treatment involving "coping skills" or "chronic" headaches is not contradictory to having reached MMI. The hearing officer's decision to apply the presumption found in Article 8308-4.25 and 4.26 to the designated doctor's report is sufficiently supported by the evidence. Although Dr. M said that MMI had not been reached, his assertions that he had gone about as far as he could go with claimant's treatment, made 40 days before claimant saw the designated doctor, do not provide a firm foundation to that conclusion. Dr. H found contusions and sprains with no tests indicating

traumatic injury to the spine. Neither recommended surgery. The reports of Dr. M and Dr. H do not reach the level of the great weight of medical evidence when compared to Dr. T's.

The hearing officer is the sole judge of the weight and credibility of the evidence, including medical evidence. *See* Article 8308-6.34(e) of the 1989 Act. If she, in this instance, believed that Dr. T had not adequately addressed all areas of injury in evaluating the claimant, she could have continued the hearing and inquired further of the designated doctor. *See* Texas Workers' Compensation Commission Appeal No. 92617, decided January 14, 1993. The hearing officer's conclusion that multiple designated doctors in different specialties should not be appointed is sound; she points out in her opinion that multiple designated doctors could differ in their opinions and questions where the presumption would then apply; multiple designated doctors would not necessarily provide a resolution to medical issues that the statute contemplates.

The decision and order of the hearing officer are sufficiently supported by the evidence and are affirmed.

_____
Joe Sebesta
Appeals Judge

CONCUR:

_____
Stark O. Sanders, Jr.
Chief Appeals Judge

_____
Philip F. O'Neill
Appeals Judge